

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KISHA WALTERS, an individual,
Plaintiff,

v.

DOLLAR TREE DISTRIBUTION, INC.,
and DOES 1 through 10,
inclusive,
Defendants.

No. 2:21-cv-02299-JAM-JDP

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

This matter is before the Court on Plaintiff Kisha Walters' ("Plaintiff") motion to remand for lack of subject matter jurisdiction. See Mot. to Remand ("Mot."), ECF No. 9. Defendant Dollar Tree Distribution, Inc. ("Defendant") opposes the motion. See Opp'n, ECF No. 16. Plaintiff replied. See Reply, ECF No. 22. For the reasons set forth below, the Court DENIES Plaintiff's motion to remand.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for March 15, 2022.

I. BACKGROUND

Plaintiff filed her complaint in the San Joaquin County Superior Court on December 15, 2020. Ex. A to Notice of Removal ("Compl."), ECF No. 1. Defendant then removed the action to this Court on December 13, 2021. Notice of Removal at 1, ECF No. 1. Defendant's Notice of Removal asserts that this Court has subject matter jurisdiction over Plaintiff's complaint pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a). Id. at 3. Plaintiff asserts that removal was improper and seeks remand on the grounds that Defendant has not met the jurisdictional amount in controversy requirement. Mot. at 2.

Plaintiff was formerly employed by Defendant as an operations manager in Defendant's Stockton distribution center in the State of California. Compl. ¶ 9. Plaintiff alleges four causes of action under the California Fair Employment & Housing Act ("FEHA"): (1) Discrimination under Section 12940(a); (2) Harassment under Section 12940(j); (3) Retaliation under Sections 12940(h) and (m)(2); and (4) Failure to Prevent Discrimination, Harassment, and Retaliation under Section 12940(k). See Compl. Plaintiff seeks relief for "compensatory, special, and general damages," "punitive and/or exemplary damages," and "statutory attorneys' fees and costs." Id.

II. OPINION

Federal district courts have subject matter jurisdiction over civil actions between parties with diverse citizenship where "the amount in controversy exceeds the sum of or value of \$75,000, exclusive of interests and costs." 28 U.S.C. § 1332(a). Such an action may be removed to federal court under

1 28 U.S.C. § 1441(a). The removal statute is strictly construed,
2 and the Court must reject federal jurisdiction if there is any
3 doubt as to whether removal was proper. Duncan v. Stuetzle, 76
4 F.3d 1480, 1485 (9th Cir. 1996).

5 The parties do not dispute that the diversity requirement
6 is met. They only dispute whether the amount in controversy
7 exceeds \$75,000. Plaintiff argues that remand is proper because
8 she pleads entitlement to less than \$75,000 in damages. Mot. at
9 2. Defendant opposes remand arguing that the amount in
10 controversy is greater than \$75,000. Opp'n at 11.

11 A. Legal Standard

12 When the jurisdiction of the Court is challenged, as it is
13 here, the party invoking federal jurisdiction has the burden of
14 proving by a preponderance of the evidence that removal is
15 proper. Geographic Expeditions, Inc. v. Estate of Lhotka, 599
16 F.3d 1102, 1106-07 (9th Cir. 2010). The parties may submit
17 evidence outside the complaint including affidavits,
18 declarations, or "summary-judgment-type evidence relevant to the
19 amount in controversy at the time of removal." Singer v. State
20 Farm Mut. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997) (internal
21 citation omitted). The district court "must [then] make
22 findings of jurisdictional fact to which the preponderance
23 standard applies." Dart Cherokee, 574 U.S. at 89 (internal
24 citation omitted).

25 "[I]n assessing the amount in controversy, a court must
26 assume that the allegations of the complaint are true and assume
27 that a jury will return a verdict for the plaintiff on all
28 claims made in the complaint." Campbell v. Vitran Exp., Inc.,

1 471 Fed.Appx 646, 648 (9th Cir. 2012) (internal citation
2 omitted). "In that sense, the amount in controversy reflects
3 the maximum recovery the plaintiff could reasonably recover."
4 Arias v. Residence Inn by Marriott, 936 F.3d 920, 927 (9th Cir.
5 2019) (citing Chavez v. JPMorgan Chase & Co., 888 F.3d 413, 417
6 (9th Cir. 2018)).

7 B. Analysis

8 Plaintiff's complaint does not allege a specific amount of
9 damages but does allege, generally and without limitation, that
10 she seeks compensatory, special, and general damages; punitive
11 and/or exemplary damages; and statutory attorney's fees and
12 costs. Opp'n at 5; see also Compl. In a FEHA action, a
13 plaintiff may recover any economic damages that are generally
14 available in non-contractual actions, including lost benefits
15 and wages. State Dep't of Health Servs. v. Super. Ct., 31 Cal.
16 4th 1026, 1042 (2003). Although Plaintiff does not specifically
17 seek lost wages in her complaint, lost wages are subsumed in her
18 plea for "compensatory, special, and general damages" absent an
19 assertion to the contrary. See Compl.

20 Jurisdictional facts are assessed on the basis of a
21 plaintiff's complaint at the time of removal. 28 U.S.C. § 1441.
22 Further, the weight of authority in this Circuit limits the
23 amount of lost wages considered in the amount in controversy to
24 those accrued at the time of removal. See Daley v. Walmart
25 Stores, Inc., No. SA CV 18-0518-DOC, 2018 WL 3104630, at *4
26 (C.D. Cal. Jun. 21, 2018). The Court therefore calculates lost
27 wages from the time of Plaintiff's termination through the time
28 of removal.

1 Plaintiff alleges she was wrongfully terminated on December
2 11, 2019. Compl. ¶ 31. Defendant removed this action on
3 December 13, 2021. See Notice of Removal. Since two years have
4 elapsed between Plaintiff's wrongful termination and Defendant's
5 Notice of Removal, the Court will calculate her lost wages as
6 twice her annual salary.

7 Defendant asserts that Plaintiff made \$81,120 annually at
8 the time of her termination. Decl. of Cynthia Cunningham ¶ 5,
9 ECF No. 1-2. Plaintiff does not dispute this estimate in her
10 moving papers. See Mot.; see Reply. Accepting Defendant's
11 estimate of Plaintiff's annual salary, Plaintiff's lost wages
12 for two years is \$162,240 (2 x \$81,120), exceeding the required
13 jurisdictional amount.

14 Plaintiff objects to the inclusion of lost wages in
15 Defendant's amount in controversy calculation for two reasons.
16 Mot. at 3. First, Plaintiff contends that Defendant has
17 presented "no evidence . . . that Plaintiff is seeking to
18 recover 'lost wages,'" and therefore Defendant's calculations
19 are "purely conclusory and speculative." Mot. at 3-4. Second,
20 Plaintiff contends that, even if lost wages were included, the
21 amount would be mitigated to the extent that Plaintiff has
22 secured subsequent employment. Id. at 4. Both arguments are
23 unavailing.

24 First, the Court disagrees with the argument that the
25 Defendant may not include lost wages in its calculations merely
26 because Plaintiff refuses to affirm or deny her claim to said
27 wages. "[T]he amount in controversy reflects the maximum
28 recovery the plaintiff could reasonably recover." Arias, 936

1 F.3d at 927 (emphasis added). Plaintiff has broadly pled
2 recovery for "compensatory, special, and general damages." See
3 Compl. Absent an admission that Plaintiff will not seek lost
4 wages, Defendant is justified in including lost wages in its
5 amount-in-controversy calculations, because it is an available
6 remedy for FEHA violations.

7 Second, as Defendant points out, the amount in controversy
8 requirement looks to the value of Plaintiff's claims if she were
9 to succeed. Opp'n at 7. Any mitigation would go to the
10 question of what Defendant actually owes rather than what is
11 presently at controversy. It is inappropriate for the Court to
12 consider mitigation when assessing the amount in controversy,
13 because "mitigation of damages is an affirmative defense, and a
14 'potential defense does not reduce the amount in controversy for
15 purposes of establishing federal jurisdiction.'" Jackson v.
16 Compass Grp. USA, Inc., 2019 WL 3493991, at *4 (C.D. Cal.
17 Jul. 31, 2019) (quoting Perez v. Alta-Dena Certified Dairy, LLC,
18 647 F. App'x 682, 684 (9th Cir. 2016)).

19 Accordingly, in the absence of conflicting evidence,
20 Defendant has proved by a preponderance of the evidence that the
21 jurisdictional amount in controversy has been met based on
22 Plaintiff's lost wages (\$162, 240). The Court need not reach
23 the parties' remaining arguments about Plaintiff's other
24 recoverable damages for emotional distress, future attorneys'
25 fees, or punitive damages.

26 III. ORDER

27 For the reasons above, the Court finds that Defendant has
28 established by a preponderance of the evidence that the amount in

1 controversy exceeds \$75,000 exclusive of interest and costs. As
2 the parties do not dispute diversity of citizenship, the Court
3 has subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).
4 Accordingly, the Court DENIES Plaintiff's Motion to Remand.

5 IT IS SO ORDERED.

6 Dated: May 6, 2022

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9 JOHN A. MENDEZ,
10 UNITED STATES DISTRICT JUDGE
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